

Procedural Guide

0300-318.05

OBTAINING RESTRAINING ORDERS

Date Issued: 12/07/11 Effective date 12/21/11 (NOTE: The effective date applies to only those sections highlighted in yellow, the rest of the procedures are currently in effect. This will allow time for SCSW to inform their CSWs of the changes.)

☐ New Policy Release

☒ Revision of Existing Procedural Guide 0300-318.05, Obtaining Restraining Orders, dated 02/27/08

Revision Made: NOTE: Current Revisions are Highlighted

This Procedural Guide has been revised due to changes in WIC 213.5 with the passage of AB 1596 that now require cases to be related to domestic violence in order for Juvenile Court to issue restraining orders. Also, the range of actions the court can order restraining orders for have expanded to include stalking, threatening, harassing, telephoning and any contact by mail.

Cancels: None

DEPARTMENTAL VALUES

This Procedural Guide supports the Department's efforts to improve child safety and to reduce the reliance on detention by the issuance of restraining orders thus allowing the child to remain safely in his/her home.

WHAT CASES ARE AFFECTED

This Procedural Guide is applicable to all new and existing referrals and cases.

OPERATIONAL IMPACT

A Restraining Order is a court order a judge makes to protect individuals from the actions of another, which can be spoken, written, or physical. They can be issued

through Juvenile Dependency and Delinquency Courts, Family Law Court, Criminal Court, Probate Court or Civil Court.

However, in cases of domestic violence the use of a restraining order is not a guarantee of safety for the family. Additionally, it can only afford protection in cases where the victim of violence requests or desires the protection afforded by the restraining order. Deciding upon whether the victim's stated desire to obtain a restraining order will protect the children is an important step. It is important to remember that they are not a magic shield for safety and will not protect children when the victim does not desire, is reluctant to obtain or is pressured into seeking a restraining order.

FAMILY LAW COURT

Separating a child from his/her family home is a highly traumatic event for the child and the parent(s) and should never be done routinely. In many cases, a Restraining Order, which removes a perpetrator (i.e., parent, guardian, current or former member of the child's household, or any person) from the home, reduces the risk level to such a degree as to allow a child to remain safely in the home or limits contact with the child. Since an Emergency Protective Order, if issued, is of short duration, it is necessary to obtain a Temporary Restraining Order and Protective Order, which may or may not be granted by the Family Law Court. In addition, the Family Law Court has the authority to issue Restraining Orders that can continue up to five years and can be extended for another five years, or permanently, upon request by a party.

A restraining order through Family Law (Civil) Court must meet specific legal requirements, in particular there must be a recent violent assault or threat (usually within 30 to 60 days) and the parent seeking the order must write in a declaration detailing a history of the abuse and exactly why they fear the abuser. If the at-risk parent, for any reason, does not feel afraid or does not want the order, it **will not be granted**. Further, once a temporary restraining order (TRO) is obtained the parent must go back to court for a permanent order. Maneuvering through the Family Law Court can be difficult for an individual.

When it appears that a non-offending parent/legal guardian/caregiver is desirous of and willing to **protect the child** with the assistance of the Family Law Court and dependency court intervention is not necessary, a Restraining Order may be used for the purpose of allowing children to remain in their own homes. However, a CSW may find it necessary to involve dependency court even after a Restraining Order has been issued. This may occur when it is in the child's best interests to remain in the home of the non-offending parent/legal guardian/caregiver, but the Restraining Order will not be able to meet the protective needs of the child.

There are several types of protective orders which may be issued from Family Law Court when the parties are related or have a familial relationship (e.g. dating, relatives, roommates, children in common), as follows:

Family Code § 6240-6274, Emergency Protective Orders (EPO)
Family Code § 6320-6327, Temporary Restraining Orders (TRO)
Family Code § 6340-6389, Restraining Orders (RO)
DEPENDENCY COURT

Who can the Court protect:

Dependency Court has exclusive jurisdiction to issue protective order on behalf of the children, caretakers, parents, legal guardian, CASA, social worker (former and current), or any other children or family members in the home for as long as the dependency case remains open.

When Court can issue protective orders

If:

- 1) a petition has been filed with Dependency Court and
- 2) the case is related to domestic violence.

What Court can order:

The court can issue orders prohibiting a person from:

- a) molesting
- b) attacking
- c) striking
- d) stalking
- e) battering
- f) threatening
- g) sexually assaulting
- h) harassing
- i) telephoning including but not limited to annoying telephone calls
- j) destroying personal property
- k) contacting by mail
- l) coming within a specified distance
- m) disturbing the peace
- n) residing in the home of the child's caretaker

There is no requirement that the child reside with the parent, legal guardian, or caregiver for the court to issue the Restraining Order. Further, the Dependency Court can issue a restraining order against a third party that is not a party to the dependency court pursuant to WIC § 213.5 (a). Primary authority for issuing restraining orders in the dependency court is found pursuant to:

Family Code §§§§ 6240, 6250.3, 6251 and 6275, Emergency Protective Order (EPO)

Welfare & Institutions Code §§ 213.5, 304, Temporary Restraining Orders (TRO)

Welfare and Institutions Code §§ 213.5, 304, Restraining Orders (RO)

Welfare and Institutions Code § 340.5, Restraining Orders for CSWs

California Rules of Court, Rules 1429.5 (a) and (b)

Family Code Section 6240 provides for law enforcement to request from a judge or court commissioner, who is on call 24 hours a day, an Emergency Protective Order (EPO) if the person or family is in immediate and present danger of domestic violence, child abuse, child abduction or stalking. The EPO is limited in time, and expires in five court days or seven calendar days. An EPO, issued pursuant to the Family Code is in force in any case including a dependency court case.

Pursuant to Family Code Section 6250.3, an emergency protective order is valid only if it is issued by a judicial officer after making the findings required by Family Code Section 6251 and pursuant to a specific request by a law enforcement officer.

Family Code Section 6251 states that, An emergency protective order may be issued only if the judicial officer **finds both** of the following:

- (a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code.
- (b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult.

Family Code Section 6275 states that a law enforcement officer who responds to a situation in which the officer believes that there may be grounds for the issuance of an emergency protective order pursuant to Section 6250 of the Family Code or Section 646.91 of the Penal Code, **shall inform the person for whom an emergency protective order may be sought**, or, if that person is a minor, his or her parent or guardian, provided that the parent or guardian is not the person against whom the emergency protective order may be obtained, that he or she may request the officer to request an emergency protective order pursuant to this part. Further, notwithstanding Section 6250, and pursuant to this part an officer shall request an emergency protective order if the officer believes that the person requesting an emergency protective order is in immediate and present danger.

A **Temporary Restraining Order** that is issued from the family law court without notice is limited in time and expires in twenty (20) days or if the court deems necessary it is good for **twenty five (25) days** from the date the temporary restraining order is issued. (Family Code §242)

A **Temporary Restraining Order** that is issued without notice from the Dependency Court is limited in time and expires in **fifteen (15) days** or if the court deems necessary it is good for **twenty (20) days** from the date the temporary restraining order is issued. (CA. Rules of Court 1429.5 (g).)

A **Restraining Order** that is issued from the family law court may be issued effective for **up to five (5) years** if the expiration date is written on the face of the restraining order.

If the expiration date is not written on the face of the restraining order than it is in effect for **only three (3) years** from the date issued by operation of law.

A **Restraining Order** that is issued from the Dependency Court maybe issued for up to **three (3) years**.

A Restraining Order that is issued from either the Family Law Court or the Dependency Court may restrain or enjoin contact between the restrained person and the persons to be protected; may exclude the restrained person from the home, may limit visitation or make an order for no visitation, and make an order for no harassment. A Family Law Court may also make orders for use of personal property, child support, spousal support, and payment of debts and restraint on selling or destroying property.

CRIMINAL COURT

Criminal Court Restraining Orders take precedence over any other Restraining Order. They are only in effect for the duration of the criminal court case and can be included as a term of the perpetrator's probation or parole. Even though the Criminal Court Restraining Order takes precedence, it does not mean that other courts can not issue Restraining Orders. There may be more than one order in effect. However, if the criminal court restraining order is more restrictive that is the order that takes precedence over the less restrictive order. In no event should the perpetrator violate the Criminal Court Restraining Order.

CIVIL COURT

The Civil Court may issue Temporary Restraining Orders and restraining orders pursuant to the Code of Civil Procedure 527 and 527.6. These cases entail parties that are not related and/or do not have a familial relationship or children in common. The time frames for obtaining the TRO and Restraining Order are essentially the same as in the Family Law and Dependency Courts.

Other protected persons may include any parent, legal guardian or current caregiver of the child whether or not that child resides with that parent, legal guardian or current caregiver.

Pursuant to Family Code Section 6200, Domestic Violence Restraining Orders are issued to prevent the recurrence of acts of "abuse" by a batterer. Abuse is defined under the Domestic Violence Prevention Act (DVPA) as either:

- 1) Intentionally or recklessly to cause or attempt to cause bodily injury.
- 2) Sexual Assault
- 3) To place a person in reasonable apprehension of imminent seriously bodily injury to that person or to another.
- 4) To engage in any behavior that has been or could be enjoined under Family Code §6320. Family Code §6320 provides for restraint on conduct which includes

enjoining a party from molesting, attacking, sexually assaulting, battering, threatening, stalking, harassing, telephoning, destroying personal property, contacting, coming within a specific distance of, or disturbing the peace of a third party. For good cause it can be extended to protect other members of the household or family.

In these situations, Intake and Detention Control (IDC) shall be contacted **prior to the expiration of the Restraining Order**. In order to avoid placing the child at risk, the case must be calendared for an arraignment/detention hearing prior to expiration of the Restraining Order. **If this is not done, the child will not be under the protection of either the Restraining Order or dependency court during the time between the expiration of the EPO and the arraignment/detention hearing.**

Anytime after a dependency petition has been filed and until the petition is dismissed or dependency jurisdiction is terminated, a CSW may file an application with the dependency court to apply for a restraining order to enjoin any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; exclude any person from the dwelling of a person who has care, custody and control of the child; or, enjoin any person from behavior, including contact, threatening or disturbing the peace of the child by the court's determination.

A Restraining Order issued by another state is enforceable in this state pursuant to Family Code §6402. The foreign Restraining Order needs to be registered with our court in order to be entered in the DOJ registry. (Family Code §6404).

This Procedural Guide sets forth the protocol to be followed for use of an EPO, TRO and/or a permanent Restraining Order and how to request them. These procedures are divided into two parts:

Part A: No dependency petition has been filed and no protective orders have been granted.

Part B: An EPO or Temporary Restraining Order (TRO) has been filed and prior to the expiration of the order and it becomes necessary to file a petition on behalf of the child. (The CSW will need copies of the EPO or the TRO),

or

After a petition has been filed and prior to the dismissal of the petition or the termination of dependency status, it becomes necessary to apply for a restraining order (JV-245) on behalf of the child, caregiver, parent, or CSW.

Reminder: In assessing cases involving domestic violence, CSWs **shall not use** the threat of removing a child from the home if a parent does not cooperate to obtain or enforce a restraining order. This approach is coercive and inappropriate, is a barrier to working with the family, and may encourage a parent to feign cooperation out of fear of losing their child, which can place the child at risk of harm.

Procedures

A. WHEN: REQUESTING A PROTECTIVE ORDER IN LIEU OF FILING A PETITION

EPOs may be issued at anytime, whether or not the court is in session, when there are reasonable grounds to believe that a child is in immediate danger of abuse by any person. **Only a law enforcement officer can request the court to issue an EPO and only if it is issued by a judicial officer after making the findings required by Family Code Section 6251.**

TRO's may be issued only when court is in session.

CSW Responsibilities

1. Assess the family's situation to ensure that **both** of the following conditions exist prior to considering the use of a Protective Order.
 - a) The CSW believes that the non-offending parent/legal guardian/current caregiver can and will enforce a Protective Order. Factors to consider in assessing this are:
 - willingness and ability of the non-offending parent/legal guardian/current caregiver to follow through with the necessary steps to involve the court and obtain a restraining order and protect the children;
 - non-offending parent's/legal guardian's/current caregiver's dependence on the financial/emotional support of the person to be restrained ; and,
 - emotional stability and support network of the non-offending parent/legal guardian/current caregiver.
 - b) The CSW believes that if the Restraining Order is issued, dependency court involvement will not be necessary because there are no additional risk factors, which endanger the child. It may be necessary to involve the parents in Voluntary Family Maintenance services in order to monitor these situations closely, provide services that are needed to the family.
2. Conduct a case conference with the SCSW as to why a Restraining Order would be appropriate. If SCSW approval is obtained, see #3., below. If SCSW approval is not obtained, **take the necessary steps to protect the child.**
3. Document all discussions with SCSW in the Contact Notebook.
4. Contact the law enforcement agency which has jurisdiction over the area in which the child's home is located to request assistance in evaluating the situation for the possible use of a Restraining Order. Obtain any police reports or incident reports.

NOTE: If law enforcement agrees to obtain an EPO, they will complete all of the required paperwork. Court and/or law enforcement ensures that the parties are served.

5. Discuss the circumstances of the case with the responding law enforcement officer and explain why a Restraining Order appears to be a more viable alternative than filing a petition in dependency court.

NOTE: Family Code Section 6275 states that a law enforcement officer who responds to a situation in which the officer believes that there may be grounds for the issuance of an emergency protective order pursuant to Section 6250 of the Family Code or Section 646.91 of the Penal Code, **shall inform the person for whom an emergency protective order may be sought**, or, if that person is a minor, his or her parent or guardian, provided that the parent or guardian is not the person against whom the emergency protective order may be obtained, that he or she may request the officer to request an emergency protective order pursuant to this part

6. In conjunction with the law enforcement officer, evaluate the ability of the non-offending parent/legal guardian/caregiver to enforce the Protective Order as well as the likelihood that the restrained party will honor the Protective Order. Whenever possible, interview both parties. **If it appears that one or both will not agree, take the necessary steps to protect the child.**
7. If there is no agreement, inform all parties of DCFS' intention to initiate dependency court proceedings. Follow the procedures in Part B.
8. Discuss the Restraining Order process and the need to follow through with a permanent order, with the non-offending parent/legal guardian/caregiver and the need to contact law enforcement immediately if the restrained party violates the order.
9. Document all contacts with law enforcement, parents/legal guardian(s)/caregiver(s) and all other pertinent information in the Contact Notebook.
10. If ongoing services are necessary, see Procedural Guides 0080-502.10, Initial Case Plan and 0090-503.10, Family Maintenance Services for Both Court and Voluntary Cases.
11. If ongoing services are not necessary, close the referral per established policy and procedures.

SCSW Responsibilities

1. Review the SDM Safety and Risk Assessment and the SDM Safety Plan for approval. See FYI 06-12, Use of the Structured Decision Making (SDM) Safety Plan

2. Approve the SDM Safety and Risk Assessment, and SDM Safety Plan tools and return to the CSW. If necessary, return the SDM tools to the CSW for corrective action prior to approval.

Reminder: The Safety Plan is not used if there is a detention or Voluntary Family Reunification (VFR).

B. WHEN: DEPENDENCY COURT INTERVENTION BECOMES NECESSARY PRIOR TO THE EXPIRATION OF THE EPO OR A RESTRAINING ORDER IS NECESSARY TO PROTECT THE CHILD WHO IS ALREADY UNDER DEPENDENCY COURT JURISDICTION

In **matters involving domestic violence**, the CSW may find it necessary to involve the dependency court after an EPO has been issued. This may occur when it is in the child's best interests to remain in the home of the non-offending parent/legal guardian/caregiver but the Family Law Court will not be able to meet the protective needs of the child. The CSW may also wish to consider a non-disclosure order, in lieu of and/or in addition to a Restraining Order, to protect the child. See Procedural Guide 0300-303.07, Nondisclosure Orders. If, after the issuance of an EPO, or TRO information comes to the attention of DCFS which indicates that the child cannot be protected by the EPO, or at some point after a petition has been filed, information comes to the attention of DCFS which indicates that a Restraining Order is necessary to protect the child, the following steps shall be taken:

Case-Carrying CSW Responsibilities

1. Assess the family's situation using SDM Safety and Risk assessment tools.
2. Conduct a case conference with the SCSW and the out-stationed County Counsel, to discuss the facts of the case and determine if a petition and/or an application for a Restraining Order should be requested.
3. Take the child into temporary custody if (s)he is described under WIC 300(b) or (g) or request that law enforcement do so, in all other situations. If law enforcement refuses, see Procedural Guide 0070-548.20, Taking Children into Temporary Custody.

<p>NOTE: Although some children in these situations are not detained, IDC will initiate "an accelerated non-detained petition" procedures for placing the case on the Dependency Court Calendar.</p>

4. In cases where Dependency Court is already involved (i.e., after the detention hearing and **prior to the Disposition hearing**), contact IDC (see Procedural Guide 0300-503.30, Requesting a Change of Order Pursuant to WIC 385). For post-Disposition cases submit an Ex Parte Application and Order.

5. Contact IDC so the case can be heard prior to the expiration of an EPO or TRO, or notify IDC immediately when it becomes necessary to request a TRO on a case where a petition has been filed.

NOTE: Temporary Restraining Orders expire at the following times: on the 15th calendar day following the day they are issued or if the court finds good cause on the 20th or 25th calendar day following the day they are issued, depending on which court the parties are in.

6. Receive notification from IDC of the date and time the required documents are due at IDC and when the hearing will be held. These matters are calendared within one to two business days. See Procedural Guides 0300-301.05, Petitions and 0300-303.15, Writing the Detention Report.
7. Document all contacts with the family, law enforcement and all other pertinent information in the Contact Notebook.

SCSW Responsibilities

1. Review the SDM Safety and Risk Assessment and the SDM Safety Plan for approval.
2. Approve the SDM Safety and Risk Assessment and SDM Safety Plan tools and return to the CSW. If necessary, return the SDM tools to the CSW for corrective action prior to approval.

IDC, DI, or Case-Carrying CSW Responsibilities

1. Prior to creating the required paperwork, review all supporting documents such as the police report, medical report, and school report.

NOTE: The Detention Report and JV-245 are completed by the ER, DI or case-carrying CSW on initial filings and faxed to IDC. Document the necessity for the court to issue a Restraining Order in the Detention Report.

2. Create the JV-245, Application and Declaration for Restraining Order, in the Hearing Notebook. Complete all of the required fields. See Procedural Guide 0300-301.05, Petitions.
 - a). The case-carrying CSW shall complete and fax the JV-245 and the Ex Parte Application and Order on cases where there is existing dependency status to JCS Liaison for set-on. see Procedural Guide 0300-503.30, Requesting a Change of Order Pursuant to WIC 385.
 - b). For cases with new petition filings, fax the completed paperwork to IDC. See Procedural Guide 0300-301.05, Petitions.

At the time of the hearing, Juvenile Court Services staff shall request that the court issue an order restricting the offending person's access to the child in order to complete a thorough investigation and to continue to protect the child.

In the event that a party has received or been denied a more permanent restraining order prior to the initial dependency court hearing, the dependency court has the ability to issue restraining orders based on the circumstances of the case. In addition, the dependency court has the authority to issue restraining orders that can continue up to three years and can be extended for another three years, upon request by a party.

C. WHEN: WHEN A CSW (OR ANY MEMBER OF HIS/HER FAMILY) WHO IS PROVIDING SERVICE TO A DEPENDENT CHILD OF THE JUVENILE COURT HAS BEEN THREATENED

CSW Responsibilities

1. Immediately notify the SCSW, ARA, and RA as to the nature, type and extent of the threat/or endangerment. Notify the County Counsel assigned to the case. They will prepare the JV 245 and Restraining Order for the court to sign if issued.
2. Contact the police department to make a report and explain in detail why a restraining order is needed and why safety is threatened, notify law enforcement of available evidence i.e. letters, e-mails, or threatening messages on an answering machine or voicemail. Do not erase messages. Make a copy of any messages including the dates they were received.
3. Ask for the police report number and when completed, obtain a copy of the official police report. Prepare a report to court detailing all facts that evidence the need for a PO and attach any police reports to the report. Sign the report under penalty of perjury. When the restraining order is granted by the court, request that County Counsel provide you with a certified copy of the restraining order.
4. Ensure that the office manager, law enforcement, SCSW, ARA, RA and everyone involved have a copy of the restraining order for enforcement purposes.
5. File a copy of the Restraining order in the case record.
6. Document all contacts with law enforcement in the Contact Notebook.

D. WHEN: TERMINATING A CASE WHICH CONTAINS FAMILY LAW EXIT ORDERS

When the court is terminating a case with exit orders, the exit order must conform to Family Code Section 6218, pursuant to Welfare and Institutions Code 362.4. Family Law exit orders can contain Permanent Protective Orders. However, when requesting an extension of an RO, the court has to find evidence that the victim has a "reasonable apprehension of future abuse" by a preponderance of the evidence.

APPROVAL LEVELS

Section	Level	Approval
A	SCSW	SDM Safety and Risk Assessment and Safety Plan Tools Ex Parte Application and Order
B	SCSW	Detention Report SDM Safety and Risk Assessment and Safety Plan Tools Ex Parte Application and Order
C	None	
D	None	

OVERVIEW OF STATUTES/REGULATIONS

California Rules of Court, Rule 1429.5(a) states that after a petition has been filed under section 300, 601, or 602, and until the petition has been filed under section 300, 601, or 602, and until the petition is dismissed or dependency or wardship is terminated, or the ward is no longer on probation, the court may issue restraining orders as provided in WIC, section 213.5.

California Rules of Court Rule 1429.5(b) Application for restraining orders may be made orally at any scheduled hearing regarding the child who is the subject of a petition under section 300, 601, or 602, or may be made by written application, or may be made on the court's own motion. The written application must be submitted on Judicial Council Form Application and Affidavit for Restraining Order (JV-245).

Family Law Code Section 6218, states "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

- (a) An order described in Section 6320 enjoining specific acts of abuse.
- (b) An order described in Section 6321 excluding a person from a dwelling.
- (c) An order described in Section 6322 enjoining other specified behavior.

Family Code Section 6240-6241, summarizes that the superior court in each county designate at least one judge, commissioner, referee to be reasonably available to issue orally, by telephone or otherwise, emergency protective orders at all times whether or not the court is in session. Further, that the designated law enforcement officer be able to request or enforce an emergency protective order as referred to in section 6241.

Family Code Section 6250.3

An emergency protective order is valid only if it is issued by a judicial officer after making the findings required by Family Code Section 6251 and pursuant to a specific request by a law enforcement officer.

Family Code Section 6251

An emergency protective order may be issued only if the judicial officer finds both of the following:

- (a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code.
- (b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult.

Family Code Section 6275

- (a) A law enforcement officer who responds to a situation in which the officer believes that there may be grounds for the issuance of an emergency protective order pursuant to Section 6250 of this code or Section 646.91 of the Penal Code, shall inform the person for whom an emergency protective order may be sought, or, if that person is a minor, his or her parent or guardian, provided that the parent or guardian is not the person against whom the emergency protective order may be obtained, that he or she may request the officer to request an emergency protective order pursuant to this part.
- (b) Notwithstanding Section 6250, and pursuant to this part, an officer shall request an emergency protective order if the officer believes that the person requesting an emergency protective order is in immediate and present danger.

Family Law Code Section 6320 and Welfare and Institutions Code Section 213.5, states if a petition has been filed and the matter is related to domestic violence, the Juvenile Court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.

Family Code Section 6321, states that the court may issue an ex parte order excluding a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence for the period of time and on the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the dwelling if that person has a right to the possession of the premises, the party to be excluded has assaulted the person who will stay in the dwelling or any person under the care and control of the other party or any minor child of the parties or of the other

party; or physical or emotional harm would otherwise result to the other party, to any person under the care, custody and control of the other party or to any minor child of the parties or the other party:

(b) The court may issue an order under subdivision (a) only on a showing of all of the following:

- (1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.
- (2) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.
- (3) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

Family Code Section 6322, states that the court may issue an ex parte order enjoining a party from specified behavior that the court determines is necessary to effectuate orders under Section 6320 or 6321.

Family Law Code Sections 6389, states that a willful and knowing violation of a protective order is a crime punishable as provided by section 273.6 of the penal Code.

Welfare and Institutions Code Section 304, summarizes that after a petition has been filed pursuant to Section 311, and until the time that the petition is dismissed or dependency is terminated, no other division of any superior court may hear proceedings regarding the custody of a child or the establishment of a guardianship for the child. All issues regarding the child's custody while under the jurisdiction of the juvenile court shall be heard by the juvenile court which may review any records that would be available to the domestic relations division of a superior court hearing that matter.

Welfare and Institutions Code Section 340.5, summarizes that when a social worker is assigned to provide child welfare and other services to a dependent child of the juvenile court, the juvenile court may for good cause shown, and after an ex parte hearing, issue its order restraining the parents of the dependent child from threatening the social worker, or any member of the social worker's family with physical harm.

Welfare and Institutions Code Section 362.4, States that when the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the child's parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act, are pending in the superior court of any county, or an order has been entered with regard to the custody of that child, the juvenile court on its own motion, may issue a protective order, and an order determining the custody of, or visitation with the child.

LINKS

California Code <http://www.leginfo.ca.gov/calaw.html>
Division 31 Regulations <http://www.cdss.ca.gov/ord/PG309.htm>
Title 22 Regulations <http://www.dss.cahwnet.gov/ord/PG295.htm>

RELATED POLICIES

[Procedural Guide 0070-537.10](#), Assessment of Domestic Violence
[Procedural Guide 0070-548.10](#), Disposition of the Allegations and
Closure of the Emergency Response Referral
[Procedural Guide 0070-548.20](#), Taking Children into Temporary Custody
[Procedural Guide 0080-502.10](#), Initial Case Plan
[Procedural Guide 0090-503.10](#), Family Maintenance Services for Both
Court and Voluntary Cases
[Procedural Guide 0100-520.51](#), Maintaining the Confidentiality of the Child's
Placement
[Procedural Guide 0300-301.05](#), Petitions
[Procedural Guide 0300-303.07](#), Nondisclosure Orders
[Procedural Guide 0300-303.15](#), Writing the Detention Report
[Procedural Guide 0300-503.30](#), Requesting a Change of Order Pursuant to WIC 385
Management Directive 95-06, Acts/Threats of Violence Against Employees in the
Workplace
FYI 07-43, Use of Restraining Orders in Cases of Domestic Violence

FORM(S) REQUIRED/LOCATION

HARD COPY **EPO-001**, Emergency Protective Order

LA Kids: [JV-100](#), Juvenile Dependency Petition
 [JV-245](#), Application and Declaration for Restraining Order

CWS/CMS: Contact Notebook
 Detention Report
 Ex Parte Application and Order
 JV-100, Juvenile Dependency Petition
 JV-245, Application and Declaration for Restraining Order

SDM: Structured Decision Making Safety Assessment
 Structured Decision Making Risk Assessment
 Structured Decision Making Safety Plan

TYPES OF RESTRAINING ORDERS

Type of Order	Statutory Authority^	Grounds for Issuance/Enforcement	Expiration	Criminal Charges for Violation
Emergency Protective Order (EPO)* **	FC 6240-6273	Reasonable grounds to believe that an adult or child is in danger of domestic violence. Applicant - Law Enforcement	5 court days up to 7 total days from the date of issuance.	PC 273.6
Domestic Violence Prevention Order (DVPO)* **	FC 6300-6388	Reasonable proof of a past act or acts of abuse. Applicant – Victim	After a hearing, the order is good for a period of up to 5 years, and may be renewed.	PC 273.6
Stalking: EPO* **	PC 646.91	Reasonable grounds to believe that a person is in immediate and present danger of being stalked. Applicant - Law Enforcement	5 court days up to 7 total days from the date of issuance.	PC 166, 646.9
Stalking: Order Post Conviction	PC 646.9(k)	Seriousness of facts before the court, probability of future violations, and the safety of the victim and his or her immediate family. Issued by sentencing court.	Up to 10 years.	PC 646.9(b)
Criminal Court Stay Away Orders* ** *****	PC 136.2	Reasonable cause to believe that actual intimidation has occurred or is reasonably likely to occur. Applicant – District Attorney	The life of the case and probationary period***	PC 136.1, 166(c)(1)
Civil Court Restraining Orders* **	CCP 527, 527.6	Clear and convincing evidence that unlawful harassment exists. Applicant - Victim	TRO available for 15 days, and an injunction following a hearing is valid for up to 3 years, and may be renewed.	PC 273.6, PC 166(a)(4)
Workplace Violence Protective Orders*	CCP 527.8	Clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence upon an employee. Applicant - Employer	TRO is valid for up to 15 days, and an injunction following a hearing is valid for up to 3 years, and may be renewed.	PC 273.6
Foreign State and Tribal Orders	Full faith and credit per FC 6401-6404	Jurisdiction must authorize a person to seek enforcement of a valid foreign or tribal order.		Enforced using California procedure. See FC 6402.
Elder Abuse Orders*	WIC 15657.03	Reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult. See WIC 15610.07. Applicant - Victim	TRO available per CCP 527. After a hearing, an order is valid for up to 3 years, and may be renewed.	PC 273.6

Type of Order	Statutory Authority^	Grounds for Issuance/Enforcement	Expiration	Criminal Charges for Violation
Dependency Court	WIC 213.5 (a) – (l)	Proof by application and any attachments, additional declarations or documentary evidence, file, or testimony. Criminal court only court which may issue a contrary order.	Ex parte TRO available WIC 213.5 (a) – (c) for 15 or 20 days. After hearing, expiration determined by court up to three years	PC 273.6

* These orders contain gun restrictions on the restrained party pursuant to PC 12021(g)(1-2). For Foreign State or Tribal Orders, gun restrictions are enforceable if the issuing court had the authority to prohibit such action.

** These orders contain mandatory arrest provisions for violating the order pursuant to PC 836(c)(1).

*** *People v. Stone*, (2004) 123 Cal. App. 4th. 153. *Stone* held that 136.2's application is limited to the pendency of a criminal proceeding. Such orders may be issued only by courts with jurisdiction over the criminal proceeding, and only to victims or witnesses who have suffered harm, intimidation or dissuasion.

**** Criminal Court Protective Orders take precedence over any other order outstanding against the defendant.